IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8779 OF 2004
and
WRIT PETITION NO.8780 OF 2004

WRIT PETITION NO.8779 OF 2004

The United Western Bank Ltd. .. Petitioner

Vs.

Bajpe Shivram Sheety. .. Respondent

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Shri Girin N. Pandit for the petitioner.

Shri Sapna N.Nath for the respondent.

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WRIT PETITION NO.8780 OF 2004

The United Western Bank Ltd. .. Petitioner

Vs.

Bajpe Shivram Shetty. .. Respondent

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Shri Girin N.Pandit for the petitioner.

Shri S.P.Kanuga for the respondent.

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CORAM : R.M.S.KHANDEPARKAR, J

DATED : 28th OCTOBER, 2004.

P.C.

1. Taken up on board on request.

2. Heard the learned advocates for the parties.

3. The petitioners seek to challenge the order dated 8th March, 2004 passed by the lower appellate Court and further the order dated 28th September, 2004 passed by the lower appellate Court in Appeal No.200 of 2003.

4. By the order dated 8th March, 2004, the petitioners were directed to deposit all the arrears of municipal taxes and society charges in the account of the respondents in the petitioner's bank and further were directed to continue to deposit such amounts as and when demanded by the Bombay Municipal Corporation and the Society till the disposal of the appeal and that the execution of the decree was stayed subject to the condition of such deposit of the amounts by the petitioners. The time granted by the order dated 8th March, 2004 to deposit the said amounts was further extended by the order dated 28th September, 2004.

5. Obviously, the impugned orders have been passed during the pendency and final disposal of the

appeal while dealing with the application for stay and the condition imposed is merely in relation to the claim of the municipal taxes and the society charges to be paid by the petitioners and there is serious dispute between the parties to such liability. It is the contention of the petitioners that the petitioners are not liable to pay the said amounts and according to the respondents, as per the agreement, the petitioners are liable to pay the same. Be that as it may, since the petitioners seek interference in the impugned orders which primararily relate to the monetary claim of the respondents and the right in regard to such claim is directly in question and since the appeal filed before the lower appellate court is pending and the said issue is yet to be adjudicated upon, it is too premature for this Court to ascertain the said issue while entertaining the writ petitions against the interim orders passed during the pendency of the said appeal. Being so, there is no case for interference in the impugned orders in writ jurisdiction. However, since the issue as to whether the respondents are entitled to get the said amounts appropriated for their benefits during the pendency of the appeal or not, has not been gone into by the lower appellate court, while allowing the petitioners to deposit the said amounts in the account of the

respondents in the petitioner's bank instead of the Court. The respondents are at liberty to move before the lower appellate court with an application for disbursement of the said amounts and in case such an application is filed, the same shall be disposed of by the lower appellate Court within a period of six weeks from the date of filing of such application, after hearing the parties. Except this modification, no interference as such is called for in the impugned orders. The petitions therefore are disposed of with the above modification with the liberty granted as above.

6. Needless to say that the deposits referred to above are only in relation to the society charges and the municipal taxes. As it has been stated by the learned advocate that the municipal charges have already been deposited, the petitioners shall deposit the society charges on or before the 4th November, 2004, without fail. The petitions are accordingly disposed of with no order as to costs.

7. Certified copy be expedited.